

IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

JOAN HODAK,	:	
t/d/b/a AQUADOR,	:	
	:	
Plaintiff,	:	
	:	Civil Action No. <u>1:11-CV-470</u>
v.	:	
	:	
NAMCO LLC,	:	JURY TRIAL DEMANDED
	:	
Defendant.	:	

**COMPLAINT**

Joan Hodak, trading and doing business as (“t/d/b/a”) Aquador (“Joan” or “Plaintiff”), by and through her undersigned counsel, hereby alleges the following for her complaint against Defendant Namco LLC (“Namco” or “Defendant”).

**INTRODUCTION**

This case is a patent dispute involving the sale of a product by Namco that infringes U.S. Patent No. 5,285,538 (“the ‘538 Patent”). For many years, Joan has sold a product under the mark AQUADOR® that practices the claims of the ‘538 Patent. For the last several years, Namco has sold a competing product that infringes the ‘538 Patent, despite Namco’s receipt of formal notice from Joan that she believed Namco’s sales activities infringed her rights in the ‘538 Patent.

### THE PARTIES

1. Joan is an individual who maintains a residence at East Cruikshank Road, Valencia, Pennsylvania 16059. Joan's late husband, Frank Hodak, is named as the sole inventor of the '538 Patent, which is for a "Sealing Assembly for a Swimming Pool Skimmer." See Exhibit 1, hereto, which is incorporated by reference herein. By virtue of a Declaration of Gift and Confirmation of Business Ownership delivered by Frank Hodak before his death, a copy of which is attached hereto and incorporated by reference herein as Exhibit 2, Joan became a joint owner with rights of survivorship of, *inter alia*, the '538 Patent. On January 12, 2005, Frank Hodak passed away, thus vesting sole ownership of the '538 Patent in Joan. On December 30, 2010, pursuant to an Asset Purchase Agreement, Joan sold the '538 Patent to a third party, but she retained the right to sue for infringement that occurred prior to December 30, 2010 and the right to continue selling her product. A copy of the Asset Purchase Agreement is attached hereto and incorporated by reference herein as Exhibit 3.

2. On information and belief, Defendant Namco is a limited liability company organized under the laws of the State of Delaware and is registered as a foreign limited liability company in the State of Connecticut. On information and belief, Defendant Namco has its principal place of business at 100 Sanrico Drive, Manchester, Connecticut 06040. On information and belief, Defendant Namco is

registered to do business in Pennsylvania. On information and belief, Defendant Namco operates four stores in Pennsylvania, including a store in Harrisburg at 3849B Union Deposit Road, Harrisburg, Pennsylvania 17109. On information and belief, Namco has sold the infringing product in Pennsylvania and in this District.

#### JURISDICTION AND VENUE

3. This complaint alleges patent infringement under the Patent Act, 35 U.S.C. § 271, *et seq.*

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338, and 35 U.S.C. § 281.

5. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400.

#### COUNT I – PATENT INFRINGEMENT

6. Joan incorporates paragraphs 1 – 5 hereof, as though they have been set forth in full herein.

7. The ‘538 Patent discloses and claims innovative sealing assemblies used to cover openings in swimming pool skimmers. The AQUADOR®, which is covered by the ‘538 Patent, has been a very successful product for Joan. Joan has sold AQUADOR® sealing assemblies for over a decade.

8. On information and belief, in or about June 2006, Jedco Products, Inc., of Butler County, Pennsylvania, began selling a competing winterizing

product under the 'Skim Saver Lid'l Seal' mark. On information and belief, Defendant Namco bought the Skim Saver Lid'l Seal products from Jedco Products, Inc. and then resold the infringing products in its retail stores, including in this District.

9. On information and belief, by virtue of the foregoing, Defendant Namco sold and offered for sale a winterizing sealing assembly that infringes the '538 Patent in violation of 35 U.S.C. § 271.

10. The '538 Patent is valid and enforceable. All maintenance fees associated with it have been timely paid and the '538 Patent has been in force throughout. Notice of the '538 Patent is and has been published on the AQUADOR® product packaging in accordance with 35 U.S.C. § 287.

11. On information and belief, Defendant Namco is and has been aware of the existence of the '538 Patent. On information and belief, Defendant Namco received a certified letter from Joan Hodak on November 20, 2007, informing Defendant of the '538 Patent and her view that the Skim Saver Lid'l Seal products infringe her patent. A copy of the letter, dated November 15, 2007, is attached hereto and incorporated by reference herein as Exhibit 4. On information and belief, despite receipt of such notice Defendant Namco never contacted Joan, formed a good faith belief that its conduct was lawful or otherwise stopped selling the product. Defendant Namco's infringement of the '538 Patent has taken place

with full knowledge of the '538 Patent and has been intentional, deliberate, and willful, making this an exceptional case and thereby entitling Plaintiff to increased damages and reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285.

12. On information and belief, Defendant Namco has infringed, contributorily infringed, and/or actively induced or contributed to the infringement of the '538 Patent in the United States, by offering to sell and selling products that infringe one or more of the claims of the '538 Patent. Such infringement has been accomplished by Defendant selling or offering for sale products distributed under the Skim Saver Lid'l Seal designation.

13. On information and belief, Defendant has aided, abetted, participated in, approved, and/or ratified acts of infringement, and/or has actively induced infringement of the '538 Patent by others, such as its customers.

14. By reason of the foregoing, Plaintiff has been damaged and will continue to be damaged, and has suffered and will continue to suffer irreparable loss and harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Joan Hodak t/d/b/a Aquador respectfully requests that the Court enter judgment in her favor and against Defendant Namco LLC on her claims and that the Court further:

i. Enter judgment that Defendant Namco LLC has infringed the '538 Patent;

ii. Enter judgment finding Defendant Namco LLC liable to Plaintiff for its acts of infringement of the '538 patent and order it to pay all damages adequate to compensate Joan Hodak for the infringement, but in no event less than a reasonable royalty, pursuant to 35 U.S.C. § 284;

iii. Award Plaintiff its costs and prejudgment interest on all damages pursuant to 35 U.S.C. § 284;

iv. Find this case to be exceptional under 35 U.S.C. § 285 and award Plaintiff treble damages and all expenses and costs incurred by Plaintiff in pursuing this action, including reasonable attorneys' fees;

v. Award Plaintiff such further relief as the Court may deem appropriate.

Dated: March 11, 2011

Respectfully submitted,

JOAN HODAK T/D/B/A AQUADOR

By: **ELLIOTT GREENLEAF & BALABAN**

/s/ Matthew D. Coble

Bryan E. Barbin (Pa. I.D. 36908)

Matthew D. Coble (Pa. I.D. 89603)

Kathryn L. Mason (Pa. I.D. 306779)

Governors' Row

27 North Front Street

P.O. Box 1284

Harrisburg, PA 17108-1284

Voice: (717) 234-3282

Fax: (717) 233-4264

beb@elliottgreenleaf.com

mdc@elliottgreenleaf.com

klm@elliottgreenleaf.com

**LELAND SCHERMER & ASSOCIATES, P.C.**

Leland P. Schermer, Esq. (*pro hac vice* pending)

Pa. I.D. 47283

Michael Monyok, Esq. (*pro hac vice* pending)

Pa. I.D. 201198

535 Smithfield Street, 3<sup>rd</sup> Floor

Pittsburgh, PA 15222

(412) 642-5000 (phone)

(412) 642-5010 (facsimile)

lschermer@schermerlaw.com

mmonyok@schermerlaw.com

Attorneys for Plaintiff,

Joan Hodak t/d/b/a Aquador

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